

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14425, of Robert W. Grossman, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from TV, Radio and Hifi repairs and retail sales of used TV and appliances, first floor, to flower shop, first floor, in an R-5-B District at premises 1729 - 20th Street, N.W., (Square 110, Lot 19).

HEARING DATE: May 14, 1986

DECISION DATE: June 4, 1986

FINDINGS OF FACT:

1. The site, known as premises 1729 - 20th Street, N.W., is located on the east side of 20th Street between S and R Streets. It is in an R-5-B District.

2. The site is rectangular in shape with a frontage of 21 feet along 20th Street and a depth of 140 feet. A 30 foot public alley is adjacent to the rear of the site. The site is improved with a two story structure with basement.

3. The R-5-B District extends to the north, east and south of the site. A C-2-B District is located to the west. The site is in the Dupont Circle Historic District. The east side of the street consists of two midrise apartment buildings, some multiple family row dwellings, a cleaners, a shoe repair store and a restaurant. The west side of the street consists of several commercial establishments such as cleaners, grocery store, delicatessen, restaurants, office, and some residential units above the first floor commercial uses.

4. The current Certificate of Occupancy, No. B93068, dated March 24, 1975, allows the first floor of the site to be used for TV Radio and Hifi repairs and retail sales, and for the sales of used TV's and appliances. Carvel's TV Shop was operated at the site for 12 years.

5. Pursuant to Sub-section 8207.2 of the Zoning Regulations, the applicant is seeking a special exception under Paragraph 7106.11 to change a nonconforming use from the previous use to a flower shop, first floor.

6. The nonconforming use TV, Radio, Hifi repairs and retail sales of used TV and appliances is first permitted as a matter-of-right in the C-1 District. The proposed flower shop use is also first permitted as a matter-of-right in the C-1 District.

7. The existing character of the area is a mixture of commercial and residential uses.

8. The flower shop's hours of operation shall be from 9:00 A.M. to 7:00 P.M. Monday through Saturday.

9. Four full-time employees will work at the site.

10. Trash will be removed from the rear of the site daily by a private hauler currently serving the square.

11. The operators of the flower shop will pick up flowers and deliver them to the site once a day.

12. No alterations to the exterior of the building are proposed. No signs will be erected. The logo of the shop will be painted on the front window and a brass plaque not to exceed 12 inches by 18 inches and will be affixed to the wall adjacent to the entranceway.

13. Over 50 percent of the operation's sales are expected to be generated from within a ten block radius.

14. Approximately 1,000 square feet will be devoted to the flower shop. The second floor of the structure will be devoted to residential uses.

15. By letter dated May 6, 1986, Advisory Neighborhood Commission (ANC) 2B reported that it took no formal action on the application but that at an informal discussion no adverse comments were heard concerning the application. The ANC reported that several neighbors were of the opinion that the flower shop would be better than the TV/Radio Sales and Repair Shop. The Board finds that in this case it need not accord to the ANC the "great weight" to which it is otherwise entitled when the ANC submits a formal written recommendation to the record.

16. By memorandum dated May 6, 1986, the Office of Planning (OP) recommended conditional approval of the application. The OP reported that the proposal will not have a negative impact on the value, utilization, or enjoyment of property in the neighborhood. The OP was of the opinion that the applicant has met the test under Paragraph 7106.11 and Sub-section 8207.2 of the Zoning Regulations and recommended approval of this application provided that (1) the hours of operation are from 9:00 A.M. to 7:00 P.M. Monday through Saturday; and (2) the signs are limited to the painted logo and telephone number on the window and a

brass plaque not to exceed 12 inches by 18 inches. The Board concurs with the reasoning and recommendation of the OP.

17. A representative of the Residential Action Coalition (RAC) testified in opposition to the subject application stating that a florist shop was not needed in the area and that more residential property was. The Board finds that the applicants are undertaking a business venture, a need for the shop or its success or failure is not a matter properly before the Board. The change of a nonconforming use is allowed as a special exception. A use variance is not sought. The applicant has no burden to prove that the property cannot be used for residential purposes.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 7106.11 and that the relief requested under Sub-section 8207.2 can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. Paragraph 7106.11 states in pertinent part that the Board is authorized to approve the change of a nonconforming use to a use which is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, provided that :

7106.111 The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with these regulations. Such surrounding area shall be deemed to encompass the existing uses and structures within at least 300 feet in all directions from the nonconforming use.

7106.112 The proposed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

7106.114 In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility.

7106.116 The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other

restriction or safeguard it may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

The Board concludes that the applicant has met the burden of proof. The proposed use is permitted as a matter-of-right in the most restrictive district that the previous use was. The proposed use as conditioned below in the grant of this application will not adversely affect the present character or future development of the surrounding area. The area is developed with a mix of commercial and residential uses. The use will not create any deleterious external effects. The use will be a low intensity commercial use with limited hours of operation. The use will be a neighborhood facility with the majority of its customers coming from within ten blocks of the site. The Board further concludes that the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and it will not affect adversely the use of neighboring property. Accordingly, it is ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. The number of employees shall not exceed four.
2. The hours of operation shall not exceed from 9:00 A.M. to 7:00 P.M. Monday through Saturday.
3. All deliveries shall occur during the hours of operation specified in Condition No. 2.

VOTE: 4-0 (Lindsley Williams, Paula L. Jewell, William F. McIntosh and Carrie L. Thornhill to grant; Charles R. Norris not voting, not having heard the case.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: APR 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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